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<HTML><FONT SIZE=3 PTSize=10>>In today's Comm Daily<BR>
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>          MASS MEDIA<BR>
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>      Handing public broadcasters significant victory, U.S. Appeals<BR>
>Court, D.C., invalidated FCC order subjecting noncommercial<BR>
>educational broadcasters (NCEs) and public broadcasting stations<BR>
>to competitive bidding for licenses in unreserved spectrum.<BR>
>Acting on petition for review of Commission's order filed by NPR,<BR>
>APTS, CPB and state of Ore., court upheld public broadcasters'<BR>
>contention that Communications Act "unambiguously" forbids FCC to<BR>
>require NCEs to participate in auction to obtain licenses for any<BR>
>channel, reserved or unreserved. Conceding that Act's language<BR>
>isn't perfectly crafted, court said that because auction exemption<BR>
>refers to ultimate recipient of license and not to applicants for<BR>
>license, Commission apparently has authority to require NCE<BR>
>applicant to participate in auction so long as it doesn't<BR>
>eventually receive a license. But to ensure that NCE never has to<BR>
>participate in auction for license that it ultimately receives,<BR>
>Commission must exempt all NCE applicants from such auctions,<BR>
>court said: "Inartful drafting is not the same as ambiguity."<BR>
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>Referring to Commission's argument that because statute is silent<BR>
>on question before court, it should defer to FCC's interpretation,<BR>
>court said that by failing to distinguish between reserved and<BR>
>unreserved channels, Sec. 309(j)(2) of Act exempts NCEs that apply<BR>
>for commercial licenses from participating in auctions.<BR>
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>    "True, nothing in the Act's text specifically says that NCEs applying
for<BR>
>commercial are exempt from auctions. But general rules need not<BR>
>list everything they cover," court said. Court also disagreed<BR>
>with Commission's argument that exempting NCEs from auctions for<BR>
>commercial licenses would undermine Congress's desire to recover<BR>
>value of spectrum through auctions. Notwithstanding Congress's<BR>
>desire to increase revenue, "it expressly exempted NCEs from<BR>
>participating in auctions, thus demonstrating that it understood<BR>
>that pursuit of this goal would be limited by the NCE exemption,"<BR>
>it said. Judge David Tatel wrote opinion for panel with judges<BR>
>Douglas Ginsberg and Raymond Randolph. In separate concurring<BR>
>opinion, Randolph said he agreed that Commission's order must be<BR>
>set aside and case remanded to agency but disagreed that<BR>
>Commission must on remand adopt majority's interpretation of<BR>
>statute. Calling court ruling validation of public broadcasters'<BR>
>position, NPR spokeswoman said public broadcasters were keen to<BR>
>work with FCC to craft process for "fair and equitable" award of<BR>
>spectrum. -- DK<BR>
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